

**BEFORE THE FLORIDA  
JUDICIAL QUALIFICATIONS COMMISSION**

**INQUIRY CONCERNING A  
JUDGE, NO. 01-244  
CHARLES W. COPE**

**CASE NO.: SC01-2670**

**RESPONSE TO SPECIAL COUNSEL’S  
EMERGENCY MOTION TO QUASH DEPOSITIONS  
AND, IN THE ALTERNATIVE,  
MOTION TO DISMISS COUNTS I AND III**

**COMES NOW**, The Honorable Charles W. Cope, through the undersigned counsel, requests this court to deny Special Counsel’s Emergency Motion to Quash Depositions<sup>1</sup>. In the alternative, if this Commission precludes discovery on matters which have been specifically alleged by Special Counsel as being the bases for Counts I and III, and which are directly relevant to Special Counsel’s principal witness’ perjury and motives for such with regard to such counts, then Judge Cope hereby moves to dismiss such counts I and III. In support of this requested relief, Judge Cope states the following:

**SUMMARY**

Judge Cope has noticed the depositions of certain material witnesses in this case, including but not limited to Dr. Wright and Dr. Hance. Judge Cope intends to elicit sworn testimony from such witnesses with regard to four main material issues necessary

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<sup>1</sup> The discovery matters set forth herein were not sought to be precluded by Special Counsel in either Special Counsel’s in Limine Motion to Exclude Evidence of Victim’s Reputation or Prior Sexual Activities (“Motion in Limine”) or Special Counsel Emergency Motion for Protective Order Regarding Evidence of Victim’s Reputation or Prior Sexual Activities (“Emergency Motion for Protective Order) and, as a result, could not be the subject of preclusion under the ruling of this Commission on the Emergency Motion for Protective Order. To the extent that this Commission’s order granting the Emergency Motion for Protective Order can be inferred due to inartful drafting to grant relief in excess of that sought by Special Counsel in the Emergency Motion and granted by the Commission, then this Response should be construed as a Motion for Rehearing.

to defend Counts I and III of the Amended Notice of Formal Proceedings: (1) the Woman's voluntary disclosure to Judge Cope of her recent abortion; (2) the Woman's voluntary disclosure to Judge Cope that her mother is an abusive alcoholic and her (the Woman's) desire to get away from her mother to escape such abuse; (3) the Woman's voluntary state of undress in Judge Cope's hotel room; and (4) her contemporaneous relationship with another man Daniel Meagher. Special Counsel has heretofore never sought to preclude Judge Cope's inquiry into such matters and this court has never precluded such inquiries. Furthermore, Judge Cope is entitled to discovery on such issues in that the evidence relating to such: directly refutes the allegations upon which Counts I and III are based<sup>2</sup>; directly refutes that Judge Cope was the interloper that he is characterized to be by Special Counsel and his principal witness; establishes the perjury of the Special Counsel's principal witness as to such counts; places the events forming the basis of all charges against Judge Cope in context and is necessary to achieve an understanding of the entire events; and establish the motive for Special Counsel's principal witness' false statements to the police and perjury in these proceedings. Accordingly, Judge Cope intends to proceed with the noticed discovery depositions for the purpose of making inquiries into these permitted material areas. Alternatively, if this Commission were to now grant Special Counsel's Motion to Quash such depositions, then this Commission is also obligated to dismiss those counts to which this material discovery relates, i.e., Counts I and III.

## BACKGROUND

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<sup>2</sup> It also logically flows that once the underlying allegations of counts I and III are discredited and disproven, then the basis for all of the remaining counts also fail.

Special Counsel on June 4, 2002 filed Special Counsel's in Limine Motion to Exclude Evidence of Victim's Reputation or Prior Sexual Activities ("Motion in Limine"). In that Motion Special Counsel expressly sought the following relief:

WHEREFORE, the Special Counsel hereby moves for an order excluding any evidence regarding (1) the Daughter's reputation, (2) any intimate relationships between the Daughter and persons other than Judge Cope except to the limited extent such relationships were disclosed to Judge Cope or in Judge Cope's presence in Carmel-by-the-Sea, California in April, 2000, (3) any details about any abortions the Daughter may have had except to the limited extent such abortions were disclosed to Judge Cope or in Judge Cope's presence in Carmel-by-the-Sea, California in April 2000, and (4) any occasion in which the Daughter was raped or otherwise sexually abused.

(Motion in Limine p. 9. see also p. 1). At a telephonic hearing on such Motion in Limine, the Chair denied the motion stating that the Hearing Panel would decide such evidentiary matters as they arose in the Final Hearing and in the context of the other evidence presented. Special Counsel not content with such ruling, thereafter, filed Special Counsel's Emergency Motion for Protective Order Regarding Evidence of Victim's Reputation or Prior Sexual Activities ("Emergency Motion). In that motion, Special Counsel expressly requested:

WHEREFORE, the Special Counsel hereby moves for a protective order prohibiting discovery regarding (1) the Daughter's reputation, (2) any intimate relationships between the Daughter and persons other than Judge Cope except **to the limited extent such relationships were disclosed to Judge Cope or in Judge Cope's presence in Carmel-by the –Sea, California in April, 2000,** (3) any details about any abortions the Daughter may have had **except to the limited extent such abortions were disclosed to Judge Cope or in Judge Cope's presence in Carmel-by-the-Sea, California in April 2000,** and (4) any occasion in which the Daughter was raped or otherwise sexually abused.

(emphasis added). An emergency hearing was conducted on Special Counsel's Emergency Motion. The Chair, apparently reversed its prior position in which it ruled that it would let the Hearing Panel determine the admissibility of such matters in the context of the other evidence

presented at hearing by granting Special Counsel's motion for protective order. Judge Cope, thereafter, notified Mr. Beranek and Special Counsel that Judge Cope would proceed with the previously noticed depositions and though disagreeing with the Commission's ruling would honor the Commission's restrictions as to the areas of prohibited inquiries. Shortly thereafter this Commission entered an order that, inter alia, granted the Emergency Motion for Protective Order. Such order, however, due to apparent inartfully drafting appears to erroneously preclude the deposition of Steven Hance, an individual who has knowledge concerning the above referenced material exculpatory matters; matters for which Special Counsel never sought to preclude Judge Cope's permitted and necessary inquiries. Special Counsel again now seeks to prohibit any discovery from going forward with regard to any witness whom Special Counsel asserts "on information and belief" either has "little" or "no" information relevant to this case. (Emergency Motion For Protective Order, p. 2, 3). Special Counsel's position is indefensible, contrary to the rules of discovery and his own admissions, and illustrative of the old adage "give an inch and they want a mile."

Special Counsel's limitation in his requested relief in his Motion in Limine and in his subsequent Emergency Motion for Protective Order evidences Special Counsel's acknowledgement that those matters "to the limited extent such . . . were disclosed to Judge Cope or in Judge Cope's presence in Carmel-by-the-Sea" are relevant and material to this proceeding. Such matters include but are not limited to the Woman's voluntary disclosure to Judge Cope of her recent abortion; the Woman's disclosure to Judge Cope that her mother is an abusive alcoholic and her desire to get away from her mother to escape such abuse, the Woman's voluntary state of undress in Judge Cope's hotel room as observed by Judge Cope and her contemporaneous

relationship with another married man disclosed to Judge Cope in the context of her discussion of making all the wrong choices. Given Special Counsel's implicit admission that such matters are relevant, the fact that Special Counsel has never heretofore sought to limit discovery into such areas, and given the foregoing legal precepts concerning the appropriate scope of discovery and the admissibility of evidence, Judge Cope is fully entitled to proceed with his discovery on the above referenced material matters. Notably, Dr. Hance's deposition is critical to these issues. In going forward with the necessary depositions, Judge Cope of course will abide by this Court's ruling and will not inquire into those matters that Special Counsel has convinced this Court to preclude Judge Cope's ability to discover: i.e., "(1) the Daughter's reputation, (2) any intimate relationships between the Daughter and persons other than Judge Cope except to the limited extent such relationships were disclosed to Judge Cope or in Judge Cope's presence in Carmel-by-the-Sea, California in April, 2000, (3) any details about any abortions the Daughter may have had except to the limited extent such abortions were disclosed to Judge Cope or in Judge Cope's presence in Carmel-by-the-Sea, California in April 2000, and (4) any occasion in which the Daughter was raped or otherwise sexually abused."

#### MATERIAL MATTERS AT ISSUE

The Woman's voluntary disclosure to Judge Cope of her recent abortion, her mother being an abusive alcoholic who was berating her about that recent abortion and her desire to get away from her mother to escape such abuse, as well as the Woman's voluntary state of undress in Judge Cope's hotel room as observed by Judge Cope and her contemporaneous relationship with another man as revealed by her discussion of making all the wrong choices are all facts that are extremely material and relevant to Judge Cope's defense of the disciplinary charges leveled by

Special Counsel in the Amended Notice of Formal Proceedings. These matters directly refute the allegations of Counts I and III filed by the Special Prosecutor in that they establish that Judge Cope was not the interloper that he is characterized to be by Special Counsel and his principal witness. Such matters also establish the perjury of the Special Counsel's principal witness as to such counts. Such matters also place the events forming the bases of all charges against Judge Cope in context and are necessary to achieve an understanding of the entire events. Lastly, such matters establish the motive for Special Counsel's principal witness' false statements to the police and perjury in these proceedings.

#### A. JUDGE COPE'S VERSION OF EVENTS

Judge Cope has testified in these proceedings that the Woman, shortly after meeting Judge Cope, voluntarily disclosed to him that she had a had a "recent abortion," that her mother was an "abusive alcoholic who was yelling at her because of the recent abortion and other matters" and that she at that instance wanted to get away from her mother to escape such abuse. These voluntary disclosures led Judge Cope to reasonably believe that the Woman wanted Judge Cope's company out of the presence of her mother's abuse. As a result, Judge Cope invited the Woman to go for a walk on the beach with him. This invitation occurred after Judge Cope attempted to assist the women in locating their lost Hotel key and after Judge Cope witnessed the mother's alcohol induced abuse of the Woman. While walking on the beach the two discussed various issues including but not limited to the mother's abusive behavior and the Woman's recent abortion. The woman was rational and coherent when she spoke of these and other issues. The Woman thereafter voluntarily went to Judge Cope's hotel room and, thereafter, willingly undressed. It was at this time that Judge Cope observed a physical anomaly on the woman's body that he could have

only observed if the woman was in a state of undress. The Woman was at all times appeared rational and coherent while in Judge Cope's hotel room. Ultimately, the Woman stated that she did not want to proceed any further for fear of getting pregnant. The consensual activity ceased and the Woman left. Judge Cope did not see the woman again until the early morning hours of the following day, when she asserted her false charge of prowling. The Woman accused Judge Cope of attempting to enter her hotel room with a key that Judge Cope the previous morning had attempted to assist the Woman and her mother to locate.

#### B. THE WOMAN AND SPECIAL COUNSEL'S VERSION OF EVENTS

In contrast, the Woman claims that her mother is not an alcoholic, is not abusive and was not arguing with her at all that night. She also denies disclosing such facts to Judge Cope. The Woman further denies that she had a recent abortion or that she made such representation to Judge Cope or anyone else or reported any such thing to her mother. She also denies advising Judge Cope that she wanted to get away from her mother. Instead, she characterizes Judge Cope as an interloper, who eavesdropped on their personal conversations and in all respects was a person non-gratis up to the point when Judge Cope allegedly made unwanted affectionate and/or sexual<sup>3</sup> advances to her on the beach. The Woman further denies ever entering Judge Cope's Hotel room, let alone undressing therein. Rather, she states that she fled from Judge Cope on the beach and did not see him again until the following night when he attempted to enter her hotel room with a key. Significantly, the charges being prosecuted against Judge Cope by the Special Counsel adopt in all significant respects the Woman's version of events over that two day period. For example,

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<sup>3</sup> Notably, though the Woman first alleged to authorities that Judge Cope made unwanted sexual advances towards her on the beach, she later recanted such statements saying that Judge Cope only attempted to kiss her by leaning his face towards her.

Count I of the Amended Notice of Formal Proceedings charges Judge Cope with “eavesdropping on the personal conversation of a grown woman and her mother, who were sitting outside their shared, second floor hotel room” and, thereafter, “interposing [himself] into the women’s conversation” “[i]n the early morning hours of April 4, 2001” as a result of intoxication. Count III of the Amended Notice of Formal Proceedings also charges Judge Cope with having “engaged or attempted to engage in conduct of an intimate nature with the daughter, who was obviously intoxicated and in an emotionally vulnerable state.” Count II alleges that Judge Cope stole the Woman’s motel room key and Count IV alleges that Judge Cope attempted a forcible entry into the Woman’s room with use of such key.

C. JUDGE COPE’S CASE IN DEFENSE OF SUCH CHARGES AND ALLEGATIONS.

In making such allegations and leveling formal disciplinary proceedings against Judge Cope, Special Counsel has expressly adopted and has relied upon the testimony and credibility of the Woman. Thus, Judge Cope by necessity can only defend against such charges by establishing that his version of events, and not that of Woman’s, is more credible. Judge Cope can only do so if he is permitted to prove that the events occurred as he contends they happened and/or that the events did not, or could not have, occurred as the Woman contends they happened. Unfortunately, Judge Cope’s task is made all the more daunting by the fact that there are no eyewitnesses, other than Judge Cope and the Woman, who can attest to observing the entirety of such events. Thus, Judge Cope can only defend against the charges leveled against him by corroborating his version of events through (a) discrediting or disproving, through direct or circumstantial evidence, as many of the individual occurrences that comprise the Woman’s version



of events and/or (b) proving as many of the individual occurrences that comprise his version of events. Though Judge Cope, as in most court cases, will likely be unable to offer evidence as to each underlying occurrence, Judge Cope is entitled to argue to the trier of fact after he has presented evidence of the individual occurrences that comprise the totality of events as they were attested to by either Judge Cope or the Woman, the universally recognized proposition of “false in one – false in all,” or in the Woman’s case; false in ten – false in all. Judge Cope as part of his case is also entitled to present evidence regarding the Woman’s motive for giving false testimony in these proceedings.

#### D. RELEVANT EVIDENCE

Florida Statutes, section 90.401 (1997), defines relevant evidence as "evidence tending to prove or disprove a material fact." Relevant evidence is generally admissible unless its probative value is substantially outweighed by the danger of unfair prejudice, confusion of issues, misleading the jury, or needless presentation of cumulative evidence. See § 90.403, Fla. Stat. (1997). See also, Section 90.608, Fla. Stat., which provides, in pertinent part:

(1) Any party, except the party calling the witness, may attack the credibility of a witness by:

....

(b) Showing that the witness is biased.

....

(e) Proof by other witnesses that material facts are not as testified to by the witness being impeached.

(emphasis added).

Rule 1.280(b) of the Florida Rules of Civil Procedure provides, *inter alia*, “parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party . . . It is not grounds for objection that the information sought will be

inadmissible at trial if the information sought reasonably appears to be calculated to lead to the discovery of admissible evidence. “[R]elevancy must be broadly construed . . . such that information is discoverable if there is *any possibility* that it might be relevant to the subject matter.” Equal Opportunity Commission v. Electro-Term, Inc., 167 F.R.D. 344, 346 (D. Mass. 1996)(emphasis added). Significantly, “[t]he concept of relevancy is broader in the discovery context than in the trial context.” Amente v. Newman, 653 So.2d 1030, 1032 (Fla. 1995); Scuderi v. Bostin Ins Co., 34 F.R.D. 463, 466 (D. Del. 1964)(“[t]he test for relevancy is a liberal one. It requires only a reasonable probability of materiality and is not as strict as the standard of relevance at trial. Information can be relevant even if it only leads to other relevant information.”).

In the instant case, there are various issues that are relevant to the charges leveled against Judge Cope and his defense thereof for which Judge Cope needs and intends to conduct discovery. Such issues include but are not limited to (a) the Woman’s disclosure to Judge Cope of her recent abortion; (b) the Woman’s disclosure to Judge Cope of the mother’s alcohol induced abuse of the Woman and her desire to escape her mother’s presence; (c) the Woman’s voluntary state of undress in Judge Cope’s hotel room and (d) the Woman’s contemporaneous relationship with another man. Such issues directly relate and are material to the charges leveled against Judge Cope in that proof of such (a) corroborates Judge Cope’s version of events; (b) discredits and/or disproves the Special Counsel’s principal witness’ version of events; (c) establishes the principal witness’s motive for her testimony; (d) establishes the principal witness’ lack of credibility; and (e) fully explains the inextricably intertwined events that occurred between Judge Cope and the alleged “victim.”

(1) The Woman's Disclosure To Judge Cope of Her Recent Abortion and Her Mother's Alcohol Induced Abuse of the Woman As A Result of Such.

As discussed above, the Woman shortly after meeting Judge Cope disclosed to him that she had a recent abortion, that she had disclosed such to her mother and that her mother, who was an abusive alcoholic, was berating her for such. The Woman thereafter stated her desire to get away from her mother to escape such abuse. These voluntary disclosures led Judge Cope to reasonably believe that the Woman wanted Judge Cope to rescue her from the situation by inviting her to accompany him out of the presence of her mother and as a result, Judge Cope invited the Woman to go for a walk on the beach with him. While walking on the beach the Woman discussed rationally and coherently various issues including but not limited to the mother's abuse and the recent abortion. The disclosure of such recent abortion and the mother's alcohol induced abuse of the Woman is material the charges leveled against Judge Cope in various respects. First, such disclosures are actual occurrences that happened during the events for which Judge Cope is charged. Second, such disclosures are inconsistent with the Special Prosecutor and the Woman's characterization of Judge Cope as an interloper. Rather, such establishes that the Woman was fond enough and receptive enough of Judge Cope's company that she disclosed and discussed various personal matters to him. Third, such disclosures evidence that Judge Cope did not and was not attempting to take advantage of the Woman's alleged "emotionally vulnerable" or "obviously intoxicated" state. Forth, such disclosures constitute direct evidence of a motive of the Woman to fabricate her testimony. Fifth, proof of such disclosures is necessary to explain Judge Cope's and the Woman's conduct on the two evenings in question.

In the case of Miller v. Sweetheart Cup Co., Inc. 1997 WL33153107 (N.D. Ga.), the district court in an unpublished opinion decided a discovery issue similar to that in the instant case. In Miller the plaintiff claimed that one of the individual defendants, Goudreault, had engaged in sexual harassment of the plaintiff. Goudreault, in contrast testified that the plaintiff at all times “welcomed” his behavior. Goudreault testified that the plaintiff’s disclosure to him in early 1995 that she was pregnant and planned to undergo an abortion illustrated the close nature of their relationship. In deposition the woman denied ever having an abortion and denied ever telling Goudreault that she planned to have an abortion. The Defendant, thereafter, sent subpoenas to various women’s clinics to determine whether the plaintiff, in fact, had an abortion in early 1995. The Plaintiff moved to quash the subpoenas. The court denied such motion. In so ruling the court explained:

Defendant Sweetheart hopes to establish this relationship [with Goudreault] by presenting evidence that plaintiff, *inter alia*, confided in her alleged harasser a matter, so personal, that it would be disclosed only to someone with whom the plaintiff had a close relationship. Defendant accordingly, seeks information to corroborate Goudreault’s claim that plaintiff disclosed intimate personal details of her life to him. The Court finds that the information at issue, while sensitive, is reasonably calculated to lead to the discovery of admissible evidence and could establish a viable defense to plaintiff’s claim of sexual harassment.

Moreover, plaintiff has testified under oath that she neither had an abortion nor told the defendant Goudreault that she had an abortion in early 1995.

Information that would definitively refute plaintiff's testimony is valuable for purposes other than simply to reveal plaintiff's personal facts to the factfinder. Indeed at this stage, the Court is not deciding the admissibility of such evidence, but only whether defendants may obtain it.

Id. p. 7-8. In the instant case, the Woman's disclosure of her recent abortion, her mother's alcoholism and abuse of the Woman as a result of learning of such abortion, and the Woman's desire to escape her mother's presence not only evidence that Judge Cope was not an interloper as contended by Special Counsel in Count I, but also such facts are inextricably intertwined with and are necessary to explain Judge Cope's and the Woman's conduct on the two nights at issue.

The law is well settled that evidence necessary to describe the manner in which alleged criminal activity took place or did not take place or how such events came to light is generally relevant evidence, despite the fact that such might otherwise be objectionable as prior bad act evidence because such evidence is "inextricably intertwined" with the underlying events of the alleged crime. Griffin v. State, 639 So.2d 966 (Fla.1994), cert. denied, 514 U.S. 1005, 115 S.Ct. 1317, 131 L.Ed.2d 198 (1995); Platt v. State, 551 So.2d 1277 (Fla. 4th DCA 1989); Tumulty v. State, 489 So.2d 150 (Fla. 4th DCA 1986), rev. denied, 496 So.2d 144 (1986). In Mills v. State, 2002 WL 800922 (Fla.App. 3 Dist.), the court explained ". . . evidence which is inextricably intertwined with the crime charged, is not Williams rule evidence. It is admissible under section 90.402 [Florida Statutes] because 'it is a relevant and inseparable part of the act which is in issue ... [I]t is necessary to admit the evidence to adequately describe the deed.' " (citing Coolen v. State, 696 So.2d 738, 742-43 (Fla.1997) (quoting Griffin v. State, 639 So.2d 966, 968

(Fla.1994)). See also Ehrhardt, Florida Evidence § 404.17 (2000 Edition).”). Accord, Bryan v. State, 533 So.2d 744 (Fla.1988), cert. denied, 490 U.S. 1028, 109 S.Ct. 1765, 104 L.Ed.2d 200 (1989); Ferrell v. State, 686 So.2d 1324 (Fla. 1996); Coolen v. State, 696 So.2d 738 (Fla.1997) (admitting confession of prior crime to establish the entire context out of which the alleged instant crime arose). Significantly, in the instant case Judge Cope does not seek to introduce evidence of prior bad acts or other crimes, as was the case in the aforementioned authority. Rather, Judge Cope is merely seeking to take discovery on matters that pertain to and explain in context the events at issue for which Judge Cope is being prosecuted.

In the instant case, Judge Cope believes that he will establish the following provided he is permitted to conduct the necessary discovery. Despite the Special Prosecutor principal witness’ and her mother’s sworn testimony in these proceedings to the contrary, Dr. Hance and Mr. McCann will testify that the mother is, in fact, an alcoholic who is prone to fits of alcohol induced rage and that the Woman is routinely both the subject of and recipient of such fits of rage. One particular issue that has prompted the Mother, when she is intoxicated, to verbally abuse and berate the Woman is the Woman’s past and present relationships with married men; particularly, Dr. Hance and Daniel Meagher. Dr. Hance will testify that the Mother was particularly angry at the Woman for failing to give the Mother grandchildren. Discovery will also confirm, contrary to the Woman’s sworn denials, that she did, in fact, have a recent abortion<sup>4</sup>. In short, discovery on such issues will establish the basis for the Mother’s abuse of the Woman on the first night. Such will also corroborate Judge Cope’s testimony as to the events and discredit and disprove the

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<sup>4</sup> Significantly, the Woman reported to Officer Nash, the police officer who accompanied the Woman when she effectuated the citizen’s arrest of Judge Cope, that she was discussing her “recent abortion” with her mother at the time she met Judge Cope. (See Ex. 1, Nash Depo., p. 1).

Special Prosecutor's principal witness' version of events. Such discovery will also explain and put in context the Woman's motives for desiring to go with Judge Cope on the beach and thereafter into his hotel room.

The Woman's disclosure of her recent abortion, her mother's alcoholism and abuse of the Woman as a result of learning of such abortion, and the Woman's desire to escape her mother's presence not only evidence that Judge Cope was not an interloper as contended by Special Counsel in Count I, and explains the inextricably intertwined events of those two nights, but also such facts establish the Woman's motive for providing false testimony concerning the events that form the basis of Count III, II and IV. The law is well established that a party is entitled to introduce evidence for the consideration of the fact finder which is relevant to a witness' motive to provide perjured testimony. See e.g., Newberry v. State, 8 So. 445 (Fla. 1890)(holding that a jury may consider the motives of a witness whose statements are contradictory to other testimony presented in the case); Alvarez v. State, 2002 WL 1173861 (Fla. 3d DCA June 5, 2002)(court erred in ruling that evidence of a witness' motive to lie was not admissible); contents. Kearney v. State, 689 So.2d 1310 (Fla. 5<sup>th</sup> DCA 1997)(court committed reversible error by excluding evidence of victim's father's motive for providing false testimony); Barows v. State, 805 So.2d 120, 122 (Fla. 4th DCA 2002) (citing Auchmuty v. State, 594 So.2d 859, 860 (Fla. 4th DCA 1992) and holding that "'a defendant is to be afforded wide latitude to develop the motive behind a witness' testimony.'"). In Spoerri v. State, 561 So.2d 604 (Fla. 3d DCA 1990) the court explained:

Under Section 90.402 all relevant evidence is admissible to prove or disprove a material fact. Here, the evidence indicates that the landlord was in the process of

evicting the mother and that the defendant worked for the landlord and sometimes collected the rent. Because there was a possible motive on the part of the mother to encourage K.G. to falsely accuse the defendant as a means of getting back at the landlord, the defense should not have been precluded from asking the mother questions about the relationship between the mother and the landlord and the defendant”

In Holt v. State, 378 So.2d 106 (Fla. 5th DCA 1980), the court stated:

The exposure of a witness' motivation in testifying is a proper function of the constitutionally protected right of cross-examination.... Any evidence which tends to establish that a witness is appearing for the State for any reason other than merely to tell the truth should not be kept from the jury.

Id. at 108; see Kufrin v. State, 378 So.2d 1341 (Fla. 3d DCA 1980); Cowheard v. State, 365 So.2d 191 (Fla. 3d DCA 1978), *cert. denied*, 374 So.2d 101 (Fla.1979). Similarly, the court in Barows v. State, 805 So.2d 120, (Fla. 4<sup>th</sup> DCA 2002), explained:

We conclude that it was an abuse of discretion not to allow the defense to question King over any concern regarding a possible forfeiture of his money, where such evidence was relevant to show bias or motive to lie.

Section 90.608(2), Florida Statutes, as well as the Sixth Amendment to the United States Constitution, guarantee a defendant "the right to a full and fair opportunity to cross-examine prosecution witnesses in order to show their bias or motive to be untruthful." See Chadwick v. State, 680 So.2d 567, 568 (Fla. 1st DCA 1996) (citations omitted). Patently, "[a] defendant has a strong interest in discrediting a crucial state's witness by showing bias, an interest in the outcome,



or a possible ulterior motive for his in-court testimony." Auchmuty v. State, 594 So.2d 859, 860 (Fla. 4th DCA 1992); see Jones v. State, 577 So.2d 606, 608 (Fla. 4th DCA 1991).

805 So.2d at 122-23. In Hair v. State, 428 So.2d 760, 762 (Fla. 3d DCA 1983), the court held that extrinsic evidence through testimony of other witnesses was permissible to expose the possibility of improper motives or bias in a witness.

As discussed above, it is anticipated that discovery in this case will establish the Mother's intense anger over the daughter's relationships with married men, i.e., Dr. Hance and Daniel Meagher. Such evidence will further establish the motive for the Woman's false denials of having gone to Judge Cope's hotel room and false denials of having taken her clothes off in front of Judge Cope. Such anticipated evidence further explains why the Woman would falsely tell the police that Judge Cope made unwanted sexual advances towards her on the beach, but thereafter denied in deposition having ever made such statements to the police. In addition, evidence of the "recent abortion" will also establish the Woman's motive for falsely testifying in the proceedings concerning the nature and extent of her relationship with Dr. Hance.

Given the foregoing, it would constitute an abuse of discretion and denial of Judge Cope's constitutional right of confrontation to not permit Judge Cope to conduct discovery that corroborates the Woman's voluntary disclosure of her recent abortion, her mother's alcoholism and related abuse, and the Woman's desire to escape the presence of her mother.

(2) The Woman's Voluntary State of Undress in Judge Cope's Hotel Room.

Judge Cope, pursuant to the same precepts of law set forth above, is entitled to conduct discovery to corroborate that the Woman was in his hotel room voluntarily and while therein voluntary undressed her self. Once again such evidence is material to show that Judge Cope was

not the interloper that he is alleged by Special Counsel to have been in Count I of the Amended Notice of Formal Proceedings. The Woman's voluntary entry into Judge Cope's hotel room and entering into a voluntary state of undress is inextricably intertwined with the events of those two evenings and places such events in context. Furthermore, such matters explain the Woman's motives for providing false information to the police and for committing perjury in these proceedings concerning.

(3) The Woman's Contemporaneous Relationship With Daniel Meagher.

Judge Cope, pursuant to the same principles of law discussed more fully above, also is entitled to conduct discovery to corroborate the Woman's contemporaneous relationship with Daniel Meagher. Like above, such evidence is material to and explains the Woman's perjury regarding Count III. It also places in context the Mother's extreme anger towards the Woman on the night at issue.

The reason these depositions are necessary on the eve of trial is quite clear. The Respondent ceased discovery efforts in March when the information gathered by Respondent's investigators was provided to the JQC counsel and JQC counsel announced that because of that information they could not prove the criminal charges leveled against Judge Cope and would dismiss them. Since that time, counsel for the JQC has announced that they intend to go forward with the criminal charges that they have already admitted could not be proven. Now they seek to exclude from the trial the very evidence that prompted their admissions in the first place that Judge Cope was innocent of the criminal charges and they could not prove the conduct alleged.

It was the report from Daniel Meagher and Dr. Hance both of whom were intimate with the victim before and after her encounter with Judge Cope, that the woman shaved her pubic hair which was the determining factor in the JQC's initial decision. That advice provided by both paramours of the "victim" conclusively establish that she was committing perjury in her allegations against Judge Cope. It was further the position of the JQC counsel that if the Respondent had proof of a recent abortion by the "victim" such evidence was conclusive of her pervasive perjury throughout these proceedings and false accusations against Judge Cope.

The Respondent has now developed such evidence. Not surprisingly Special Counsel wants to exclude that evidence. For this Court to prevent that evidence from going before the Hearing Panel is nothing less than a fundamental abuse of process and a deprivation of the Respondent's rights to defend himself on the charges brought.

Special Counsel for the JQC who himself drafted the charges alleged recklessly and without evidence that Judge Cope eavesdropped on the women, that he interposed himself in their personal conversation, and that he took advantage of the young woman because of her emotionally vulnerable state. These allegations in Counts I and III are not merely serious, they are fatally damaging to Judge Cope's ability to serve on the bench. The evidence which Special Counsel now desperately seeks to conceal from the Hearing Panel, is that evidence which directly refutes those specific charges.

Judge Cope will testify and has testified that the woman ("victim") confided in him that she had a recent abortion and that her mother was an abusive alcoholic and she wanted to get away from her mother. This testimony directly contravenes the proposition that Judge Cope was an eavesdropper, an interloper, and (as the woman claims) was not approached by her in anyway.

This evidence further directly contravenes the propositions set out in the Count III that Judge Cope took advantage of this woman.

Both the woman and her mother have falsely denied that the mother was an alcoholic, have falsely denied that the mother abused the woman, have falsely denied that the mother was abusing the woman the night Judge Cope met them, and have falsely denied that the woman confided a recent abortion to Judge Cope.

The evidence which will be obtained in discovery that the mother was an abusive alcoholic, that the daughter did have a recent abortion, not only establishes the direct perjury of the “victims” in the case, it establishes as well the reason for the knowingly false identification of Judge Cope as the individual at the women’s hotel room door. Stated succinctly, the woman was petrified of her mother who had abused her for years. The evidence obtained in discovery will establish that the mother had nagged her daughter to have grandchildren for her. The evidence will further establish that the mother angrily was critical of the daughter for dating married men and not providing her grandchildren and wasting her life. The circumstance wherein the mother and daughter met in Carmel-by-the-Sea was a circumstance wherein the daughter was once again in a losing relationship with a married man, her own student. It was further a circumstance where the daughter had courtesy of an affair with another married man had incurred an abortion. These circumstances establish the basis for the mother’s rage at the daughter and the daughter’s desire to get away from the mother and be with Judge Cope. It also sets the plate for the daughter’s need to falsely accuse Judge Cope not only of attempting to rape her but of being the person attempting to break-in to her room.

For this Court to exclude this evidence effectively terminates Judge Cope's ability to defend himself against a malicious accusation.

The discovery depositions scheduled will establish beyond a doubt that the mother was in fact an alcoholic, that she was in fact abusive to the daughter, that she was in fact angered at the daughter's failure to give her grandchildren, that she was in fact angered at the daughter's dating married men. It was this central conflict between the mother and the daughter that Judge Cope unknowingly walked into in Carmel-by-the-Sea. It was this central conflict that the mother and daughter have across the board perjured themselves in denying under oath. It was this central conflict that prompted the daughter, because she had left the hotel room and gone to Judge Cope's hotel room to falsely accuse Judge Cope of attempting to rape her on the beach. This was a necessary false accusation for the daughter's psychological standpoint, because she desperately feared her mother's wrath. It is telling that the daughter told the investigator for the district attorney's office that she knew it was Judge Cope at the door "in my mind" before she even got to the door. It is also telling that the mother falsely claimed at deposition that the daughter screamed out from the door that it was Judge Cope at the door before the 911 call was even placed to the police.

WHEREFORE The Honorable Charles W. Cope, through the undersigned counsel, requests this Commission to deny Special Counsel's Emergency Motion to Quash Depositions<sup>5</sup>.

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<sup>5</sup> The discovery matters set forth herein were not sought to be precluded by Special Counsel in either Special Counsel's in Limine Motion to Exclude Evidence of Victim's Reputation or Prior Sexual Activities ("Motion in Limine") or Special Counsel Emergency Motion for Protective Order Regarding Evidence of Victim's Reputation or Prior Sexual Activities ("Emergency Motion for Protective Order") and, as a result, could not be the subject of preclusion under the ruling of this Commission on the Emergency Motion for Protective Order. To the extent that this Commission's order granting the Emergency Motion for Protective Order can be inferred due to inartful drafting to grant relief in excess of that sought by Special Counsel in the Emergency Motion and granted by the Commission, then this Response should be construed as a Motion for Rehearing.

In the alternative, given that denial of discovery on matters specifically alleged by Special Counsel as being the bases for Counts I and III would irreparably prejudice Judge Cope, Judge Cope hereby moves to dismiss such counts.

Respectfully submitted,

**ROBERT W. MERKLE, ESQ.**

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via facsimile and U.S. Mail to: **Judge James R. Jorgenson**, Chair of the Judicial Qualifications Commission Hearing Panel, 3<sup>rd</sup> District Court of Appeal, 2001 S.W. 117<sup>th</sup> Avenue, Miami, Florida 33175-1716; **John Beranek, Esq.**, Counsel to the Hearing Panel of the Judicial Qualifications Commission, P.O. Box 391, Tallahassee, Florida 32302; **John S. Mills, Esq.**, Special Counsel, Foley & Lardner, 200 Laura Street, Jacksonville, Florida 32201-0240; **Brooke S. Kennerly**,

Executive Director of the Florida Judicial Qualifications Commission, 1110 Thomasville Road,  
Tallahassee, Florida 32303; **Thomas C. MacDonald, Jr., Esq.**, General Counsel to the  
Investigative Panel of the Judicial Qualifications Commission, 100 North Tampa Street, Suite 2100,  
Tampa, Florida 33602; this \_\_\_\_\_ day of June, 2002.

**ROBERT W. MERKLE, ESQ.**